

**United States Department of Labor
Employees' Compensation Appeals Board**

D.P., Appellant)	
)	
and)	Docket No. 20-0883
)	Issued: September 20, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Tarentum, PA, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 16, 2020 appellant, through counsel, filed a timely appeal from two February 25, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP).² Pursuant to

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that a January 13, 2020 decision, regarding denying appellant's wage-loss compensation claim for the period December 19, 2017 through November 23, 2018, is also within the Board's jurisdiction. However, counsel only sought appeal from the two February 25, 2020 merit decisions. Thus, the January 13, 2020 decision is not properly before the Board and will not be addressed in this decision. *See* 20 C.F.R. § 501.3.

the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 3, 2019, as she no longer had residuals or disability causally related to her accepted August 30, 2017 employment injury; and (2) whether appellant has met her burden of proof to establish disability from work commencing November 24, 2018 causally related to her accepted August 30, 2017 employment injury.

FACTUAL HISTORY

On August 30, 2017 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2017 she injured her left ankle when she exited her postal vehicle and fell to the ground while in the performance of duty. She stopped work on the date of the claimed injury. OWCP initially accepted appellants' claim for left ankle sprain. It paid her wage-loss compensation for disability from work on the supplemental rolls, commencing October 15, 2017.

In a November 29, 2018 report, Dr. Vincent Silvaggio, a Board-certified orthopedic surgeon, noted that appellant presented for follow up after undergoing posterior cervical decompression and fusion surgery. He advised that he suspected that she was exhibiting symptoms from the cervical level adjacent to the surgery site. In a November 29, 2018 report, Dr. Silvaggio noted that appellant had been seen in his office earlier that day and indicated that she should be excused from work. In a January 9, 2019 letter, he reported that she was unable to work until further notice due to having undergone back surgery. The case record does not contain a report of the referenced back surgery and it has not been authorized by OWCP.

On February 1, 2019 OWCP expanded the acceptance of appellant's claim to include lumbar sprain.

On February 5, 2019 OWCP referred appellant, along with a statement of accepted facts, and a series of questions for a second opinion examination with Dr. Victoria Langa, a Board-certified orthopedic surgeon. It requested that Dr. Langa provide an opinion regarding whether appellant continued to have residuals or disability causally related to the accepted August 30, 2017 employment injury. OWCP also requested that Dr. Langa indicate whether the August 30, 2017 employment injury necessitated cervical compression and fusion surgery.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the February 25, 2020 decisions, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In a February 27, 2019 report, Dr. Langa discussed appellant's factual and medical history and reported the findings of the physical examination she conducted on that date. She noted that examination of the lower back revealed no tenderness over the lumbar midline or over the bilateral paravertebral soft tissues. There was no muscle spasm palpable in the back and appellant had no tenderness over the iliac crests, sacroiliac joints, sciatic notches, or greater trochanters. Dr. Langa reported that active range of back motion revealed that appellant flexed forward with her fingertips at the level of her ankles. There were no localized motor or sensory deficits in either lower extremity and pulses were palpable distally. Dr. Langa diagnosed multilevel lumbar degenerative disc disease/degenerative joint disease with moderate-to-severe spinal stenosis at L4-5 and moderate spinal stenosis at L5-S1, status post posterior cervical decompression and fusion surgery (February 2018); and kyphotic deformity C3-4. She opined that the August 30, 2017 employment injury might have aggravated appellant's underlying degenerative back conditions and noted, "[appellant] remains symptomatic with regard to her lower back although physical examination today was rather unremarkable." Dr. Langa noted that appellant did not have back spasm/tenderness, range of back motion was good, and there were no localized motor or sensory deficits in the lower extremities. She indicated that, with respect to the work injury, appellant's back diagnosis was one of a lumbar sprain with an aggravation of underlying degenerative disc disease/degenerative joint disease and spinal stenosis. Dr. Langa indicated that appellant had no specific restrictions with her back. She further opined that appellant's cervical spine surgery was unrelated to the August 30, 2017 employment injury, noting that appellant was not documented to have neck complaints following that incident and that the cervical spinal stenosis documented on workup was degenerative in origin rather than related to an acute disc injury. Dr. Langa found that, with respect to her August 30, 2017 employment injury, appellant could return to her regular work as a rural carrier. In a February 27, 2019 work capacity evaluation Form (OWCP-5), she indicated that appellant could perform her usual job, but noted that her inability to work was due to her nonwork-related cervical condition.

Appellant subsequently submitted the findings of an April 24, 2018 computerized tomography (CT) scan of her brain, which showed no acute intracranial abnormalities. November 29, 2018 x-rays of her cervical spine contained an impression of status post anterior fusion of C3-4 and prior posterior fusion of C4-6 with no evidence of complication. In a March 22, 2019 letter, Dr. Silvaggio advised that appellant needed to remain off work until further notice due to upcoming surgery.⁵

OWCP requested that second opinion physician Dr. Langa submit a supplemental report clarifying her February 27, 2019 report. In a June 12, 2019 report, Dr. Langa opined that appellant had only temporarily aggravated her preexisting degenerative disc disease, which had resolved by the time of her February 27, 2019 examination. She asserted that appellant's left ankle sprain had also resolved, noting that appellant reported that her left ankle complaints had entirely resolved shortly after beginning physical therapy in September/October 2017. Dr. Langa stated, "[i]n my opinion, lumbar sprain had resolved by the time of the date of my [February 27, 2019] examination." She found that appellant could return to her date-of-injury job of rural carrier.

⁵ The case record does not contain a report of the referenced surgery and it has not been authorized by OWCP.

On July 25, 2019 OWCP expanded the acceptance of appellant's claim to include temporary aggravation of degenerative disc disease of the lumbar spine resolved by February 27, 2019, the date of Dr. Langa's initial examination.⁶

In a July 25, 2019 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits. It found that the weight of the medical opinion evidence regarding work-related residuals/disability rested with Dr. Langa's opinion. OWCP afforded appellant 30 days to submit evidence or argument challenging the proposed termination action.

Appellant subsequently submitted a July 17, 2019 report from Dr. Silvaggio who noted that she would need to remain off work until further notice.

On August 1, 2019 appellant filed a Form CA-7 claiming wage-loss compensation for disability from work for the period January 1, 2018 through March 12, 2019.⁷ She did not return to work and later claimed work-related disability continuing beyond March 12, 2019.

In an August 13, 2019 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her August 1, 2019 wage-loss compensation claim. It explained that it was developing the claim for disability from work commencing November 24, 2018 as it had already separately considered her claim for work-related disability prior to November 24, 2018.⁸ OWCP afforded appellant 30 days to respond.

OWCP subsequently received an August 15, 2019 letter from Dr. Silvaggio who held appellant off work until further notice.

By decision dated September 3, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that same date. It found that the weight of the medical opinion evidence regarding residuals/disability due to the accepted August 30, 2017 employment injury rested with Dr. Langa's opinion.

On September 11, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the September 3, 2019 termination decision.

By decision dated October 22, 2019, OWCP denied appellant's August 1, 2019 Form CA-7 claim for wage-loss compensation for disability from work commencing November 24, 2018,

⁶ On July 25, 2019 OWCP listed the date of Dr. Langa's initial examination as March 12, 2019, rather than the correct date of February 27, 2019.

⁷ A portion of the period that appellant claimed on this Form CA-7 overlapped with the period she had claimed on her November 27, 2018 Form CA-7.

⁸ By decision dated July 26, 2019, OWCP denied appellant's wage-loss compensation claim for the period December 16, 2017 through November 23, 2018. On August 8, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the July 26, 2019 decision. By decision dated January 13, 2020, OWCP's hearing representative affirmed the July 26, 2019 decision.

finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted August 30, 2017 employment injury.

On October 30, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the October 22, 2019 decision.

Appellant submitted the findings of a November 27, 2017 western blot testing with negative results, which did not rule out autoimmune hepatitis or primary biliary cirrhosis. A December 1, 2017 magnetic resonance imaging scan of her cervical spine showed foraminal narrowing at C4-5, C5-6, and C6-7, cord flattening at C4-5 and C5-6, and likely cysts at C4-5.

A hearing was held on January 14, 2020 regarding OWCP's denial of compensation for disability from work commencing November 24, 2018 and termination of wage-loss compensation and medical benefits, effective September 3, 2019.

By decision dated February 25, 2020, OWCP's hearing representative affirmed the September 3, 2019 termination decision.

By separate decision dated February 25, 2020, the hearing representative affirmed the October 22, 2019 decision denying appellant's claim for wage-loss compensation for the period November 24, 2018 and continuing.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁹ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹⁰ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹² To terminate authorization for medical treatment,

⁹ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁰ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

¹¹ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹² *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.¹³

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 3, 2019, as she no longer had residuals or disability causally related to her accepted August 30, 2017 employment injury.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Langa, OWCP's second opinion physician.

In her February 27, 2019 report, Dr. Langa diagnosed multilevel lumbar degenerative disc disease/degenerative joint disease with moderate-to-severe spinal stenosis at L4-5 and moderate spinal stenosis at L5-S1, status post posterior cervical decompression and fusion surgery (February 2018), and kyphotic deformity C3-4. She opined that the August 30, 2017 employment injury aggravated appellant's underlying degenerative back conditions, but later clarified in her supplemental June 12, 2019 report that this aggravation had resolved by February 27, 2019. Dr. Langa noted that appellant did not have back spasm/tenderness, range of back motion was good, and there were no localized motor or sensory deficits in the lower extremities. She indicated that appellant had no specific restrictions with respect to her back. Dr. Langa further opined that appellant's cervical spine surgery was unrelated to the August 30, 2017 employment injury, noting that appellant was not documented to have neck complaints following that incident and that the cervical spinal stenosis documented on workup was degenerative in origin rather than related to an acute disc injury. She found that, with respect to her August 30, 2017 employment injury, appellant could return to her regular work as a rural carrier. In her June 12, 2019 report, Dr. Langa opined that appellant had only temporarily aggravated her preexisting condition of degenerative disc disease and that the condition had resolved by the time of her February 27, 2019 examination. She found that appellant's left ankle sprain had resolved, noting that appellant reported that her left ankle complaints had entirely resolved shortly after beginning physical therapy in September/October 2017. Dr. Langa indicated, "[i]n my opinion, lumbar sprain had resolved by the time of the date of my [February 27, 2019] examination." She found that appellant could return to her date-of-injury job of rural carrier.

The Board has reviewed the opinion of Dr. Langa and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of work-related residuals and disability. Dr. Langa provided a thorough factual and medical history and accurately summarized the relevant medical evidence. She provided medical rationale for her opinion by explaining that appellant had no objective findings on examination/testing of her August 30, 2017 employment injury. Dr. Langa indicated that appellant's continuing low back problems were due to her underlying degenerative disc disease and that her cervical problems were also due to a nonwork-related condition.¹⁴ The Board, thus, finds that February 27 and June 12,

¹³ See *A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹⁴ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

2019 reports of Dr. Langa are sufficient to carry the weight of the medical evidence, establishing that appellant no longer had residuals or disability due to her accepted August 30, 2017 employment injury as of September 3, 2019.

Appellant has not submitted evidence sufficient to overcome the weight accorded to Dr. Langa or to create a conflict. She had not submitted any contemporaneous reports at the time of the termination of her compensation that established employment-related residuals or disability due to the August 30, 2017 employment injury. In July 17 and August 15, 2019 reports, Dr. Silvaggio noted that appellant would need to remain off work until further notice. However, these reports are of no probative value regarding the termination of her compensation because they do not provide an opinion on the cause of disability. The Board has held that a medical report is of no probative value if it does not contain an opinion on the issue of causal relationship.¹⁵

For these reasons, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁶ Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁷ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁸

An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.²⁰

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must

¹⁵ *T.H.*, Docket No. 18-0704 (issued September 6, 2018). See also *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁶ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹⁷ 20 C.F.R. § 10.5(f).

¹⁸ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁹ See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

²⁰ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.²¹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing November 24, 2018, causally related to her accepted August 30, 2017 employment injury.

In support of her claim, appellant submitted November 29 and December 20, 2018, and July 17 and August 15, 2019 reports from Dr. Silvaggio, who advised that appellant would remain off work until further notice. In a separate November 29, 2018 report, Dr. Silvaggio indicated that he suspected that she was exhibiting symptoms from her cervical compression and fusion surgery. In a January 9, 2019 letter, he reported that appellant was not able to work until further notice due to having undergone back surgery. In a March 22, 2019 report, Dr. Silvaggio indicated that she needed to remain off work until further notice due to upcoming surgery. However, these letters did not contain an opinion that appellant had disability for a specific period due to her accepted August 30, 2017 employment injury. As noted above, the Board has held that a medical report is of no probative value if it does not contain an opinion on the issue of causal relationship.²² Therefore, this evidence is insufficient to establish appellant's wage-loss compensation claim.

Appellant also submitted diagnostic test results dated November 27 and December 1 and 11, 2017, and April 24 and November 29, 2018. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether employment factors/injuries caused a diagnosed condition or period disability.²³

As appellant has not submitted rationalized medical evidence establishing causal relationship between the claimed period of disability and the accepted August 30, 2017 employment injury, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 3, 2019, as she no longer had residuals or disability causally related to her accepted August 30, 2017 employment injury. The Board further finds that she has not met her burden of proof to establish disability from work,

²¹ Y.S., Docket No. 19-1572 (issued March 12, 2020).

²² *Supra* note 19.

²³ C.S., Docket No. 19-1279 (issued December 30, 2019).

commencing November 24, 2018 causally related to her August 30, 2017 accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 20, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board